

## REMARKS

In the Non-Final Office Action mailed April 28, 2009, claims 1, 3-19, 22-27, 29-40, 49-51 and 53-57 were pending. Claims 1, 3-19, 22-27, 29, 30, 32-40 and 49-51 were rejected, and claims 31 and 53-57 were objected to but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Claims 1 and 11 are amended in this response, and claims 18 and 57 are cancelled. Reconsideration and allowance of the subject application are hereby requested.

Claims 1, 11-19, 29, 30, 32-40 and 49-51 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,747,588 to Dillhoff. Amended claim 1 incorporates claim 18 and recites, among other features, “wherein said guide surfaces of said first and second guide members oriented toward one another when said first and second guide members are mounted on said frame and said guide flanges are opposite each other along a length of said first and second guide members and said frame portion is structured to move said guide members away from and toward one another with said guide surfaces remaining parallel to one another.” Dillhoff discloses clamping arms 22, 23, where clamping arm 22 is integral with handle 25 and the arm 23 is pivoted to handle 25 on a pivot 26, where arm 23 is moved by pivoting with channel-like lever 28 pivoted on bar 30. There is no disclosure that handle 25 and lever 30, or that arms 22 and 23, are structured to move clamping member 45, 46 toward and away from one another with guide surfaces of clamping members 45, 46 remaining parallel to one another. Therefore, claim 1 is allowable.

Claims 12-17 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable and for other reasons. For example, claim 15 recites “wherein said stationary arm and said movable arm each include a lateral extension portion, said lateral extension portions each including a hand-hole extending therethrough.” Dillhoff fails to disclose lateral extension portions that each have a hand-hole extending therethrough, and thus does not anticipate claim 15. Therefore, claim 15 is independently allowable. Withdrawal of the rejection of claims 12-17 depending from claim 1 is respectfully requested.

Claim 11 is amended to include the features of claim 57, and is allowable as indicated in the Office Action. Withdrawal of the rejection of claim 11 is respectfully requested.

Claim 19 recites, among other features, “wherein said first and second guide members each include: opposite first and second sides extending between a proximal end and a distal end, wherein said proximal ends are coupled to respective ones of said stationary arm and said movable arm....” In contrast, Dillhoff discloses that arms 22 and 23 are coupled to the middle of clamping members 45, 46. Furthermore, it is respectfully submitted that pivot supports 50 cannot be properly considered to be the proximal ends of clamping members 45, 46 since claim 19 defines that the facing surfaces of the guide members extend “from said proximal to said distal end between said first and second sides”, and pivot supports 50 are not located at an end of the facing surfaces of clamping members 45, 46. Therefore, Dillhoff does not anticipate claim 19. Withdrawal of this basis of the rejection of claim 19 is respectfully requested.

Claims 29-30 and 32-37 depend from claim 19 and are allowable at least for the reasons claim 19 is allowable and for other reasons. For example, claim 37 recites “wherein said guide surfaces of said first and second guide members are parallel with one another, and said movable arm and said stationary arm are adapted to move said first and second guide members toward and away from one another with said guide surfaces remaining parallel.” Dillhoff discloses clamping arms 22, 23, where clamping arm 22 is integral with handle 25 and the arm 23 is pivoted to handle 25 on a pivot 26, where arm 23 is moved by pivoting with channel-like lever 28 pivoted on bar 30. There is no disclosure that handle 25 and lever 30, or that arms 22, 23, are adapted to move clamping member 45, 46 toward and away from one another with guide surfaces of clamping members 45, 46 remaining parallel. Therefore, claim 37 is independently allowable. Withdrawal of the rejection of claims 29-30 and 32-37 depending from claim 19 is respectfully requested.

Claim 38 recites, among other features, “a distal portion including a first guide member and a second guide member extending along said first guide member, said first and second guide members each including a guide surface oriented toward the guide surface of the other of said first and second guide members, said guide surfaces being generally parallel with one another; and a proximal portion including a frame coupled to said first and second guide members, said frame being structured to move said first and second guide members toward and away from one another with said guide surfaces remaining generally parallel....” As discussed above with

respect to claim 1, Dillhoff fails to disclose that arms 22, 23 or that handle 25 and lever 30 are structured to move clamping members 45, 46 toward and away from one another with facing surfaces of clamping members 45, 46 remaining parallel. Therefore, claim 38 is allowable.

Claims 39-40 depend from claim 38 and are allowable at least for the reasons claim 38 is allowable. Withdrawal of the rejection of claims 39-40 is respectfully requested.

Claim 49 recites, among other features, “wherein said frame is transversely oriented to said guide members adjacent proximal ends of said guide members”. Dillhoff discloses that arms 22, 23 are coupled to the middle of each of the clamping members 45, 46 and are not transversely oriented to clamping members adjacent the proximal ends of clamping members 45, 46. Therefore, claim 49 is allowable and withdrawal of this basis of the rejection of claim 49 is respectfully requested.

Claim 51 depends from claim 49 and is allowable at least for the reasons claim 49 is allowable. Withdrawal of the rejection of claim 49 is respectfully requested.

Claim 50 recites, among other features, “a distal portion including a first guide member extending distally from said first arm and a second guide member extending distally from said second arm, said first and second guide members being movable toward and away from one another in parallel relation by moving said first arm relative to said second arm....” As discussed above with respect to claims 1 and 37, Dillhoff fails to disclose that arms 22, 23 move clamping members 45, 46 in parallel relation by moving arm 23 relative to arm 22. Therefore, claim 50 is allowable.

Claims 10 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dillhoff in view of U.S. Patent App. Pub. No. 2004/0024291 to Zinkel. Claim 10 depends from claim 1 and is allowable at least for the reasons claim 1. Withdrawal of the rejection of claim 10 is respectfully requested.

Claim 27 recites “a distal portion including a first guide member extending distally from said movable arm and a second guide member extending distally from said stationary arm, said first and second guide members each including a guide surface oriented toward the guide surface of the other of said first and second guide members, said first and second guide members being movable toward and away from one another by moving said movable arm relative to said

stationary arm while maintaining said guide surfaces in parallel relation....” As discussed above, Dillhoff discloses clamping members 45, 46 are moved by pivoting arm 23 relative to arm 22, and thus do not move clamping members 45, 46 toward and away from one another while maintaining facing surfaces of clamping members 45, 46 in parallel relation. Furthermore, Zinkel teaches non-parallel movement of facing surfaces of the retractor disclosed therein. Therefore, claim 27 is allowable and withdrawal of the rejection of the same is respectfully requested.

Claims 1, 3-9, 11-13, 17, 19 and 22-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,431,658 to Moskovich in view of Dillhoff. Amended claim 1 recites, among other features, “wherein said guide surfaces of said first and second guide members oriented toward one another when said first and second guide members are mounted on said frame and said guide flanges are opposite each other along a length of said first and second guide members and said frame portion is structured to move said guide members away from and toward one another with said guide surfaces remaining parallel to one another.” Moskovich discloses a one piece elbow connecting the guides that requires the guides to pivot relative to one another when moved toward and away from one another. Dillhoff teaches clamping arms 22, 23, where clamping arm 22 is integral with handle 25 and the arm 23 is pivoted to handle 25 on a pivot 26. Arm 23 is moved by pivoting with channel-like lever 28 pivoted on bar 30. There is no teaching that handle 25 and lever 28, or that arms 22 and 23, are structured to move clamping members 45, 46 toward and away from one another with guide surfaces of clamping members 45, 46 remaining parallel to one another. Therefore, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 3-9, 12, 13 and 17 depend from claim 1 and are allowable at least for the reasons claim 1 is allowable. Withdrawal of the rejection of these claims is respectfully requested.

Claim 11 is amended to include the features of claim 57, and is allowable as indicated in the Office Action. Withdrawal of the rejection of claim 11 is respectfully requested.

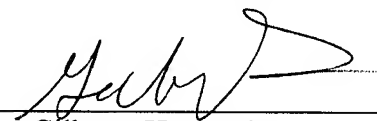
Claim 19 recites “wherein said first and second guide members each include: opposite first and second sides extending between a proximal end and a distal end, wherein said proximal ends are coupled to respective ones of said stationary arm and said movable arm....” As

discussed above, Dillhoff fails to teach that the proximal end of either of clamping members 45, 46 is coupled to either of arms 22, 23. Rather, Dillhoff teaches that arms 22, 23 are centered on clamping members 45, 46 so that clamping members 45, 46 can be rotated and swiveled through 180 degrees of rotation with respect to the arm 22, 23 to which it is mounted and still be employed to grip structural members between clamping members 45, 46. Based on the teachings of Dillhoff, one of ordinary skill in the art would have no reason to couple proximal ends of guide members to respective ones of a stationary arm and movable arm. Therefore, withdrawal of this basis of the rejection of claim 19 is respectfully requested.

Claims 22-26 depend from claim 19 and are allowable at least for the reasons claim 19 is allowable. Withdrawal of the rejection of claims 22-26 is respectfully requested.

It is respectfully submitted that the present application as amended and including claims 1, 3-17, 19, 22-27, 29-40, 49-51 and 53-56 is in condition for allowance. Reconsideration of the present application in view of the foregoing remarks is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted,

By:   
Gilberto Hernandez  
Registration No. 46,483

Dated: 7-24-09  
Medtronic  
2600 Sofamor Danek Drive  
Memphis, TN 38132  
Telephone: 901-396-3133  
Facsimile: 901-399-3040